

Part I - The Schedule

Section B

Supplies or Services and Prices/Costs

Table of Contents

Table of Contents	1
B.1 Type of Contract—Items Being Acquired	2
B.2 Availability of Funds	2
B.3 Obligation of Funds	2
B.4 Phase I Funding Profile and Calculation of Fee	2
B.5 Allowability of Subcontractor Fee.....	5
B.6 FAR 52.216-10 Incentive Fee (March 1997).....	5
B.7 Target Cost, Target Fees, and Target Schedules.....	7
B.8 Changes to Target Cost and Target Fee.....	9
B.9 Provisional Payment of Cost Performance Fee.....	11
B.10 DEAR 970.5215-3 Conditional Payment of Fee, Profit, or Incentives (DEC 2000)	14
B.11 Final Fee Determination.....	14
B.12 Evaluation Period Definition.....	15

Section B

Supplies or Services and Prices/Costs

B.1 Type of Contract—Items Being Acquired

- (A) This is a cost-plus-incentive fee (CPIF) completion-type contract for Phase I of the River Corridor.
- (B) The Contractor shall, in accordance with the terms of this Contract, provide the personnel, materials, supplies, and services (except as may be expressly set forth in this Contract as furnished by the Government or its other prime contractors) and otherwise do all things necessary to perform the work as described in Section C, *Statement of Work*.

B.2 Availability of Funds

Except as may be specifically provided to the contrary in the Section I Clause DEAR 952.250-70 entitled, *Nuclear Hazards Indemnity Agreement (JUN 1996)*, the duties and obligations of the U.S. Department of Energy (DOE) hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

B.3 Obligation of Funds

Subject to the Section I Clause FAR 52.232-22 entitled, *Limitation of Funds (APR 1984)*, the amount presently obligated under the Contract is \$2,700,000 for the period beginning April 25, 2003 and ending July 23, 2003.

B.4 Phase I Funding Profile and Calculation of Fee

- (A) The Government and the Contractor recognize that funding is not certain and higher levels of funding will reduce the target cost because of the potential for earlier completion with commensurate reduction in total fixed costs and other efficiencies, and that widely fluctuating funding levels, particularly those that are decreasing, reduce the Contractor's ability to recognize the efficiencies otherwise inherent in determinate funding levels.
- (B) The annual funding profile for Phase I is assumed to be the Base Case depicted in paragraph (D) below.
- (C) +40% Increment Case Funding: In the event the Government is able to provide funding in excess of the Base Case funding, the contractor commits to reduce the overall target cost in accordance with the target cost and target fee for the 40% increment case in Table B-2 of Subsection B.7. For a funding

profile realized during performance of this contract, which is between the Base Case Funding and the 40% Increment Case per year (including fee), adjusted target cost and target fee will be calculated as described below in B.4(F):

(D) Funding Levels (in millions \$):

<u>FY</u>	<u>Minimum Level</u>	<u>Base Case</u>	<u>40% Increment Case</u>
2003	\$150.3	\$158.3	\$221.6
2004	\$154.5	\$162.6	\$227.7
2005	\$158.9	\$167.3	\$234.2
2006	\$163.4	\$172.0	\$240.9
2007	\$168.2	\$177.0	\$247.8
2008	\$173.0	\$182.1	\$255.0
2009	\$178.1	\$187.5	\$262.5
2010	\$183.3	\$192.9	\$270.0
2011	\$188.5	\$198.5	\$277.8
2012	\$194.1	\$204.3	\$286.0
2013	\$199.6	\$210.2	\$294.2
2014	\$205.5	\$216.3	\$302.8
2015	\$211.5	\$222.6	\$311.6
2016	\$217.6	\$229.1	\$320.7
2017	\$223.9	\$235.7	\$329.9

If the contractor completes the contract work scope prior to 2017, funding listed for the subsequent years shall not apply to this contract.

(E) If funding in a given full year varies by –10% or +25% from the previous full year's funding, the variance may be a basis for an equitable adjustment to the target costs in Table B.1 and/or Table B.2, which will affect the earned fee calculation.

(F) At contract completion, the adjusted target cost will be calculated from the average annual funding experienced during contract performance, by linearly interpolating between the target costs for the base case and the 40% increment case (from Tables B.1 and B.2, respectively). The adjusted target cost will be compared to the actual cost incurred to determine the amount of fee earned.

The calculation will be executed as follows:

Step 1: The target price at the base case funding level (Table B.1) must be equal to the sum of the annual funding in the base case column in Clause B.4(D) over the target schedule duration for the base case. The target price at the 40% increment case funding level (Table B.2) must be equal to the sum of the annual funding in the 40% increment case column in Clause B.4(D) over the target schedule duration for the 40% increment case.

Step 2: Add the base case funding numbers in Clause B.4(D) for each year of the period of actual performance under the contract. Divide by the number of years to calculate the average annual base case funding.

Step 3: Add the 40% increment case funding numbers in Clause B.4(D) for each year of the period of actual performance under the contract. Divide by the number of years to calculate the average annual increment case funding.

Step 4: At contract completion, add the actual funding received for each year and divide by the actual number of years to complete the workscope. The result is the average annual funding received.

Step 5: Calculate the slope for the target cost range:

- 1) Take average annual funding level for the increment case (from step 3) and subtract the average annual funding level for the base case (from step 2) to calculate the funding range.
- 2) Take the target cost that corresponds to the base case funding level and subtract the target cost that corresponds to the 40% increment case funding level to calculate the target cost range.
- 3) Calculate the slope by dividing the target cost range by the funding range. The resulting slope has a negative sign.

Step 6: Calculate the target cost for the actual funding level experienced:

- 1) Take the average annual funding received from step 4 and subtract the average annual base case funding from step 2.
- 2) Multiply the result by the slope calculated in step 5 to get the change in target cost.
- 3) Take the target cost that corresponds to the base case funding level and add (or subtract) the change in target cost. The result is the **adjusted target cost**.

Step 7: Calculate the **actual cost**.

- 1) Since the funding contains fee, take the total funding received for the contract and divide by the sum of one plus the target fee percentage in the contract to back out the fee. (E.g., if the target fee is 7.5%, divide by 1.075.) For the purposes of this step, the funding obligated to the contract during its period of performance will be based on payment of target fee.
- 2) Reduce the amount calculated in 1) by any costs the Contracting Officer has determined to be unallowable under this contract.

Step 8: Calculate the earned fee.

- 1) Calculate the final target fee by taking the **adjusted target cost** (step 6) and multiplying by the target fee percentage in the contract.
- 2) Calculate the overrun/underrun amount by comparing the **actual cost** in step 7 to the **adjusted target cost** in step 6.
- 3) Multiply the overrun amount by 0.2 or the underrun amount by 0.3.
- 4) From the final target fee, subtract the overrun share (overrun X 0.2) or add the underrun share (underrun X 0.3). The result is the earned fee.
- 5) The calculated fee shall be adjusted per clause B.11, H.20, and H.26 before determining the final fee earned.

B.5 Allowability of Subcontractor Fee

All fee to be paid to members of a Contractor team, including affiliates, identified in the offer must be included in the incentive fee payable under Clause B.7. The term affiliate is defined as, associated business concerns or individuals if, directly or indirectly (1) either one controls or can control the other; or (2) a third party controls or can control both. A "Contractor team arrangement", as used in the FAR, means an arrangement in which, 1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or 2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program. For the purposes of this clause, this definition does not apply to the subcontractors whose contracts have been assumed, so long as the terms and conditions of those subcontracts are not altered as a result of interactions with the Offeror prior to award of this contract. There are seven subcontracts which may be assumed by the Contractor, 1) Duratek Federal Services SC# 0600X-SC-G0006, 2) Duratek Federal Services SC# 0100X-SC-G0040, 3) RCI Environmental, Inc. SC# 0100B-SC-G0010, 4) RCI Environmental, Inc. SC# 0600X-SC-G0007, 5) Federal Engineers & Constructors/Thompson Mechanical Contractors SC# 0300X-SC-G008, and 6) Foster Wheeler Environmental, Inc. SC# 0100N-SC-G0058.

Mentor-protégé arrangements and firm-fixed price or firm-fixed unit price work performed by members of the contractor team arrangement or its affiliates following a price-competitive contract award are excluded from the above fee restrictions. The term 'competitive contract award' refers to awards made subsequent to DOE award of the prime contract. The contractor shall develop procedures to avoid any perceived conflict of interest. The procedures shall be submitted to and approved by the DOE Contracting Officer prior to award to any team member or affiliate.

B.6 FAR 52.216-10 Incentive Fee (March 1997)

- (a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.
- (b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.
 - (1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.
 - (2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.
- (c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting

Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.*

(1) The fee payable under this contract shall be the target fee increased by 30 cents for every dollar that the total allowable cost is less than the target cost or decreased by 20 cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than 15 percent or less than 2.5 percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of-

(i) Payments made under assignments; or

(ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of-

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

- (v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or
- (vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.
- (5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.
- (f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.
- (g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

B.7 Target Cost, Target Fees, and Target Schedules

- (A) Target Cost, Target Fee, and Minimum Fee. Table B.1 summarizes the incentive fee under a base case funding scenario. Table B.2 summarizes the incentive fee under a 40% increment case funding scenario. The fee dollar values shown in Tables B.1 and B.2, are based on the respective Target Costs of **\$974,638,000** (Table B.1) and **\$871,768,000** (Table B.2). The Maximum Fee that may be earned by the Contractor under this Contract is **\$146,196,000** (Table B.1) and **\$130,765,000** (Table B.2) (less any decrements in accordance with Clause B.10, *Conditional Payment of Fee*, Clause H.20, *Key Personnel*, and H.26, *Small Business Fee Reduction*.) The Minimum Fee the Contractor may earn is **\$24,366,000** (Table B.1) and **\$21,794,000** (Table B.2) (less any decrements in accordance with Clauses B.10, H.20, and H.26.)
- (B) Actual Cost at Completion of Phase I means total allowable cost to achieve all of the Phase I work scope.
- (C) Target Schedule Date means the completion date for the Phase I work scope.

Table B.1. Incentive Fee Structure I

Cost Performance Fee (Base Case Funding for Phase I)		
Target Cost (excluding fee)	\$974,638,000	Target cost for completion of Phase I work as specified in Section C.
Target Fee	\$82,844,000	[Not To Exceed 8.5% of Target Cost] Target Fee that can be earned if the Actual Cost at Completion of Phase I equals the Target Cost.
Cost Share Ratio	80/20 Overrun 70/30 Underrun	Government/Contractor Share Ratio. For each \$1 of cost in excess of target cost, the Contractor's Cost Performance Fee shall be decreased by \$0.20. For each \$1 of cost less than target cost, the Contractor's Cost Performance Fee shall be increased by \$0.30.
Maximum/Minimum Fee		
Maximum Fee	\$146,196,000	[Calculated = 15.0% of Target Cost]
Minimum Fee	\$24,366,000	[Calculated = 2.5% of Target Cost]

Target Schedule Date: March 31, 2009 (Base Case Funding)

Table B.2. Incentive Fee Structure II

Cost Performance Fee (40% Increment Case Funding for Phase I)		
Target Cost (excluding fee)	\$871,768,000	Target cost for completion of Phase I work as specified in Section C
Target Fee	\$74,100,000	[Not To Exceed 8.5% of Target Cost] Target Fee that can be earned if the Actual Cost at the Completion of Phase I equals the Target Cost. The fee percentage must be equal to the fee percentage in Table B.1.
Cost Share Ratio	80/20 Overrun 70/30 Underrun	Government/Contractor Share Ratio. For each \$1 of cost in excess of target cost, the Contractor's Cost Performance Fee shall be decreased by \$0.20. For each \$1 of cost less than target cost, the Contractor's Cost Performance Fee shall be increased by \$0.30.
Maximum/Minimum Fee		
Maximum Fee	\$130,765,000	[Calculated = 15.0% of Target Cost].
Minimum Fee	\$21,794,000	[Calculated = 2.5% of Target Cost]

Target Schedule Date: May 31, 2007 (40% Increment Case Funding)

B.8 Changes to Target Cost and Target Fee

(A) It is DOE's intention that the funding available for this Contract will be consistent with the funding profile set forth in Clause B.4. As long as DOE provides annual funding at the minimum level stated in Clause B.4, paragraph (D), availability of funding within the minimum level to 40% Increment Case range each year may not be used as a basis to change this contract, except as provided in B.4(E).

(B) Changes that affect the Target Cost will be as follows:

1. Changes Beyond the Control of the Contractor: When work under this contract is increased or decreased by approved changes to the statement of work, equitable adjustments to Section B Target Cost, and corresponding Minimum, Target, and Maximum Fees, may be made, if necessary (i.e., the Contractor will submit documentation to show that the change impacts the Target Cost in Section B for evaluation and/or negotiation). Examples of these actions/events are provided in Table B.3. These examples are not meant to be a complete listing of all possible events, but represent major types of events in each category.
2. Changes for Which the Contractor is Accountable: There are some actions/events for which the Government will not negotiate changes and the Contractor agrees shall not constitute a change, to the Section B Target Cost and corresponding Minimum, Target, and Maximum Fees. Such changes will be maintained as a variance to the RC Project Baseline, as defined in Clause B.9 (A)(1) (the costs may be allowable, but the target cost and corresponding Minimum, Target, and Maximum Fees will not change). Examples of these actions/events are provided in Table B.4. These examples are not meant to be a complete listing of all possible events or all categories of events, but represent types of events in each category.

Table B.3. Changes Beyond Contractor Control
(will negotiate changes to target costs or contract requirements)

-New work (within the general scope of the contract) in a DOE direction to the contractor, new regulatory requirements, and/or change to a Record of Decision outside of the initial Statement of Work.
- Budget reductions by the Government greater than 5% below the base case funding as specified in Section B.
-DOE direction or DOE-initiated actions/events which have a demonstrable material effect on the performance of this contract.
-Changes to the unit costs of the mandatory services prescribed by the Hanford Site Services Manual (See Section C.9).
-Contractor inability to meet commitments in Section C, River Corridor Tri-Party Agreement Milestones, due to funding limitations.

Table B.4. Contractor Accountable (will not change target cost)

-Differences between the contractor's Estimate at Completion and the Target Cost, not attributable to items in Table B.3. This includes the initial baseline submittal due nine months after award and all baseline updates.
- Salary increases above any assumed escalation.
-Innovative Management/Planning ideas implemented by the Contractor or subcontractor and staff.
-Contractor initiatives for technology, process, etc. implemented by the Contractor or subcontractor and staff.
-Change in baseline cost or schedule through subcontracting.
-Poor engineering or estimating by Contractor or subcontractor.
-Poor management decision by the Contractor or subcontractor, including actions by staff.
-Contractor controlled action that results in an accident or delay of mission.
-Subcontractor controlled action that results in an accident or delay of mission.
-Inadequate schedules which do not anticipate DOE review/approval durations cited in Section C.
-Inadequate coordination with EPA/State or other groups impacting actions under the Contractor's control.
-Increases or decreases in scope that are within the range of approved RC Project Baseline assumptions.
-ES&H Violation by Contractor or subcontractor, including consequential investigations and impacts.
-Fines or penalties imposed by DOE or other regulatory agencies due to the contractor's action, or inaction. (This includes fines levied against DOE based on Contractor performance).
-Willful misconduct or lack of good judgment by Contractor or subcontractor.
-Changes caused by the Contractor, or within the Contractor's control.
-Stoppage of work due to safety or environmental compliance.

3. Increases or Decreases in Scope in this paragraph: Two exceptions to Table B.4 above, for the remediation of waste sites including burial grounds, are as follows: The contractor may submit for negotiation a request for a change to the Target Cost if the actual waste volumes are 20% greater than the projected waste volumes as specified in the Richland Environmental Restoration Project Baseline, Multi-Year Work Plan, DOE/RL-96-105 Revision 4, in the aggregate over all the waste sites specified in the SOW. The contractor may submit for negotiation a request for a change to the target cost for burial ground waste volumes needing treatment under either of the following conditions:
 - (a) Treatment is required for greater than 15% of the burial ground waste volumes projected in the above referenced baseline in the aggregate over all the burial ground sites specified in the SOW.
 - (b) Required treatment is more complex and expensive than the assumed method (grouting with cement) in the above referenced baseline.

B.9 Provisional Payment of Cost Performance Fee

The Contractor will be paid fee provisionally during the period of performance of the Contract. The amount to be paid will be determined quarterly and will be based on the Contractor's cumulative cost performance. A portion of the Provisional Fee will be paid quarterly and the remainder will be withheld pending successful completion of the Contract.

Notwithstanding any other contractual provision, nothing in this clause limits the rights of the Contracting Officer as set forth in FAR Clause 52.216-10 entitled, *Incentive Fee* (MAR 1997).

(A) Definition of Terms

- (1) RC Project Baseline is the RC Project scope, schedule and cost definition, and is formally documented and controlled as specified in Section C, *Statement of Work*. The RC Project Baseline provides the basis for tracking cost and schedule performance and computing the measures of project earned value.
- (2) Provisional Fee is a prorated share of the Cost Performance Fee based on interim cost and schedule performance. *Provisional Fee* is paid to the Contractor quarterly subject to Clauses B.10, H.20, and H.26. These payments are provisional pending successful completion of Phase I work as specified in Section C, *Statement of Work*.
- (3) Budgeted Cost of Work Scheduled (BCWS) is the sum of the cost elements for work planned. BCWS does not include fee.
- (4) Budgeted Cost of Work Performed (BCWP) is the sum of the cost elements for work completed, measured by quarter and cumulative to date, relating directly to the BCWS. BCWP does not include fee.

- (5) Actual Cost of Work Performed (ACWP) is the sum of allowable costs for work completed, measured by quarter and cumulative to date, relating directly to the BCWP. ACWP does not include fee.
- (6) Target Cost (TC): For purposes of calculating provisional fee, TC is assumed to be the TC corresponding to the average funding level of all complete previous fiscal years. For the first complete fiscal year of performance, the funding level for provisional fee purposes is assumed to be \$150 million in FY 01 dollars. TC does not include fee.
- (7) Estimate at Completion (EAC): The total estimated cost at contract completion. EAC does not include fee.
- (B) Provisional Fee Payments. The Contractor may submit requests for Provisional Fee payments only following the end of a particular quarter. For example, the request for the quarter ending March 31 shall not be submitted before April 1. Prior to submitting the request, the contractor is required to submit the monthly report covering the quarter as required by Statement of Work Section C.6, Management Products and Controls. Upon receipt of an acceptable request for Provisional Fee payment, the Contracting Officer will assess the need for adjustments based on the factors discussed later in this Clause. Provisional Fee payments are subject to written Contracting Officer approval.
- (C) The process for determining the Provisional Fee payment is:
- (1) Determination of Provisional Fee, as set forth in paragraph (D), below.
- (2) Adjustments as set forth in paragraph (E), below.
- (D) Determination of Provisional Fee. For quarters prior to DOE approval of the RC Project Baseline, and Project Management Plan, and the approval and verification of the Contractor's Integrated Safety Management System (ISMS), the contractor will be paid an amount equal to 40% of the Provisional Fee for each quarter, as follows:

$$[\text{Target Fee} \times .40 \times (\text{Elapsed Time in Quarters} \div \text{Target Schedule in Quarters})] - (\text{Cumulative Provisional Fee Previously Paid})$$

For quarters after DOE approval of the RCP Project Baseline, Project Management Plan, and the approval and verification of the Contractor's ISMS (including the quarter in which the baseline is approved), the contractor will be paid an amount equal to 75% of the Provisional Fee for each quarter, as follows:

If the Cost Variance (CV) is < 0: (Overrun)

Provisional fee = $\{[\text{BCWP}_1 \times \text{Target Fee \%} + (0.2 \times \text{CV})] \times .75 - (\text{Cumulative Provisional Fee Previously Paid adjusted for any decrements})\}$.

If the CV is > 0: (Underrun)

Provisional fee = $\{[\text{BCWP}_1 \times \text{Target Fee \%} + (0.3 \times \text{CV})] \times .75 - (\text{Cumulative Provisional Fee Previously Paid adjusted for any decrements})\}$.

For purposes of calculating provisional fee, the BCWP shall first be normalized to account for differences between the contractor's estimate at completion (EAC) and the TC using the following formula: $BCWP_1 = BCWP \times (TC \div EAC)$.

For the equations above, CV is defined as $(BCWP_1 - ACWP)$.

Initiation of Provisional Fee Payments: DOE will start making Provisional Fee payments to the Contractor at the end of the first full fiscal quarter.

The Contracting Officer will assess the need for adjustments based on the factors discussed in paragraph B.9(E).

Unless the Contracting Officer determines otherwise, Provisional Fee payments will cease after the end of the quarter that the completion of work occurs, as specified in Section C (*Statement of Work*).

(E) Adjustments to Provisional Fee Payments

- (1) Reductions in Provisional Fee Payments. Provisional Fee payments may be reduced in accordance with the provisions in Clause B.10, Clause H.20, and Clause H.26 of this Contract. Any single reduction or combination of reductions under these provisions shall not exceed the amount of fee otherwise paid in the prior four quarters.
- (2) The total amount of provisional fee paid under this contract shall not exceed $15.0\% \times BCWP_1 \times .75$.
- (3) The total amount of provisional fee paid under this contract shall not be less than $2.5\% \times BCWP_1 \times .75$ adjusted for any decrements.
- (4) In the event overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the Section I Clause FAR 52.232-17 entitled, *Interest (JUN 1996)*.

(F) Bankruptcy or Other Issues with Guarantor Company(ies). In order to assure the Contractor's ability to repay any Provisional Fee payments determined to be in excess of the actual fee earned at the completion of the Contract, the Contracting Officer reserves the right to discontinue Provisional Fee payments in the event a guarantor company files bankruptcy or is acquired by other owners, or other events arise with the Contractor's guarantor company(ies) jeopardizing DOE's ability to recover unearned Provisional Fee payments.

(G) Repayment of Bankruptcy Reserve. In the event of a bankruptcy, acquisition by other owner, or any other event affecting the ability of the contractor to continue to perform its obligations under the contract, the Contractor shall within 60 days after the event, provide evidence satisfactory to the Contracting Officer that the bankruptcy, change in ownership, or other event does not affect the ability of the Contractor to continue to perform the obligations under the Contract, or affect a material Governmental or DOE interest. Upon receipt of such evidence, the Contracting Officer shall resume making payments of fee unreduced because of the events in Clause B.9(F), and shall release all fee payments withheld due to events described in Clause B.9(F) during the preceding 60 days.

B.10 DEAR 970.5215-3 Conditional Payment of Fee, Profit, or Incentives (DEC 2000)

(Note: DOE is currently finalizing a new “Conditional Payment of Fee” clause through the rule-making process. When the new clause comes into effect, the Contractor will have the option to retain the current clause, or modify the contract and adopt the new clause. If the Contractor elects to adopt the new clause, it shall be at no increase to the target cost).

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period’s otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, “Integration of Environment, Safety and Health into Work Planning and Execution,” if included in the contract, or as otherwise agreed to with the contracting officer. The minimum performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

B.11 Final Fee Determination

(A) Upon successful completion of Phase I work as specified in Section C, the Contracting Officer shall determine the total fee earned by the Contractor consistent with FAR Clause 52.216-10 (Mar 1997) entitled, *Incentive Fee*, and any reductions made under any other clause of the contract. If the amount of the total fee earned is less than the total amount of all fee payments previously made to the Contractor, the Contractor shall reimburse DOE the difference. The difference is subject to FAR

Clause 52.232-17 entitled *Interest* (Jun 1996). If the amount of total fee earned is more than the total amount of all prior fee payments previously made to the Contractor, DOE shall pay the Contractor the difference.

(B) Costs that are incurred for operation of the Environmental Restoration Disposal Facility per Clause C.3.2.4.1(B), to dispose of wastes that are not generated as a result of the River Corridor contract will not be included in the ACWP, BCWP, BCWS, TC, or EAC used for fee determination under this contract.

(C) Termination. If this contract is terminated in its entirety, fee shall be payable to the contractor consistent with paragraph (A) above. The parties agree that the term "Default" in FAR Clause 52.249-6, Termination (Cost Reimbursement) (Sept 1996), includes the situation where the contractor is performing at the Minimum Fee (2.5%) level for a period of any four consecutive calendar quarters. Nothing in this paragraph shall limit or restrict the application of FAR Clause 52.249-6.

B.12 Evaluation Period Definition

An evaluation period, as used in Clause B.10, DEAR 970.5215-3 Conditional Payment of Fee, Profit, or Incentives (DEC 2000) is defined as a one-year period beginning with the first day of contract performance (the day after the transition period ends). The earned fee amount means the amount of provisional fee the contractor earns in an evaluation period based upon the contractor's earned value performance, excluding the provisional fee withhold amount required in Clause B.9. Fee reduction will begin at the quarterly payment that is next scheduled following the action by the DOE-RL Operations Office Manager at a rate to be determined by the Manager.